IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WA.No. 556 OF 2007

AGAINST THE JUDGEMENT IN WPC.3718/2007 DATED 27/02/2007
.....

APPELLANT: PETITIONER:

V. RAGHUNATHAN, SECRETARY,
ARYANADU SERVICE CO-OPEARATIVE BANK LTD.,
NO.T.539, ARYANADU, THIRUVANANTHAPURAM.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN

RESPONDENTS:
---

1. V. SARALA, CHIEF ACCOUNTANT,
ARYANADU SRVICE CO-OPERATIVE BANK,
ARYANADU, NEDUMANGADU TALUK,
THIRUVANANTHAPURAM.

2. THE ARYANADU SERVICE CO-OPERATIVE
BANK, ARYANADU, NEDUMANGAD TALUK,
THIRUVANANTHAPURAM REPRESENTED BY ITS
SECRETARY.

3. THE BOARD OF DIRECTORS, ARYANADU
SERVICE CO-OPEARATIVE BANK, ARYANADU,
NEDUMANGAD TALUK, THIRUVANANTHAPURAM
REPRESENTED BY ITS PRESIDENT.

4. THE SECRETARY TO GOVERNMENT
CO-OPERATION (C) DEPARTMENT,
THIRUVANANTHAPURAM.

5. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), VANCHIYOOR, THIRUVANANTHAPURAM.

6. THE KERALA CO-OPERATIVE TRIBUNAL, THIRUVANANTHAPURAM REPRESENTED BY SECRETARY.

GOVT. PLEADER SRI. SANDESH RAJA.
R1 BY ADV. SRI. K. RAMKUMAR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 27.3.2007, THE COURT ON 13.4.2007, DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

W.A. NO. 556 OF 2007

DATED THIS, THE 13TH DAY OF APRIL, 2007.

J U D G M E N T

Raman, J.

Appellant is the petitioner in W.P.(C) 3718/2007. He filed the said writ petition challenging the order passed by the Arbitration Court in A.R.C. 28/2005 and confirmed by the Co-operative Tribunal in A.P. No. 43/2006. The issue that arose for consideration was as to whether the appellant was possessed of the requisite qualification to hold the post of Secretary of the second respondent Bank.

2. The appellant entered the service of the Bank as a salesman on 2.1.1974. He was thereafter promoted as Junior Clerk on 1.1.1978 and as Senior Clerk on 1.1.1980. He became an Accountant on 1.8.1987. In the case of the first respondent, he joined the service of the Bank as a sales woman with effect from 1.7.1979 and she was promoted as Senior Clerk on 1.4.1984. Subsequently, two vacancies arose in the post of Accountant. Accordingly, both the appellant as well as the first respondent were promoted with effect from 1.8.1987. As between the appellant and the first

respondent, the appellant being senior, he was later promoted to the post of Chief Accountant with effect from 1.4.1999 and as Assistant Secretary with effect from 1.8.2001. In the vacancy which arose in the post of Chief Accountant, as a result of the appellant's promotion as Assistant Secretary, the first respondent was promoted. Subsequently, the appellant was promoted as Secretary from 1.7.2005 in a vacancy which arose on 30.6.2005. The first respondent challenged the appointment of the appellant as Secretary inter alia contending that the appellant is not possessed of the requisite qualification to hold the said post. At the time when the appellant was promoted as Chief Accountant, the first respondent filed a writ petition as O.P. 17709/1993. That writ petition was dismissed against which W.A. 3049/2001 was filed. Ext.R1(a) is the copy of the judgment dated 16th November, 2002 rendered by this Court in the said writ appeal. From the narration of facts in the said judgment, it could be seen that the 4th respondent therein was the appellant herein. He possessed only SSLC while he was appointed as salesman in 1974. Even though he was not qualified for further promotion he was promoted to the post of Junior Clerk with effect from 5.1.1978 and subsequently, as Senior Clerk with effect from 1.8.1980. Both of them were subsequently promoted as Accountant on 1.8.1987 as noticed above. But by that time, the appellant was not a graduate nor has passed J.D.C. He passed J.D.C. only in October, 1988. As per Rule 186

of the Kerala Co-operative Societies Rules, no person shall be eligible for appointment in any post unless he possess the qualifications prescribed. For the post of Clerk and above, Degree with J.D.C. is compulsory. But the appellant was given exemption from acquiring the said qualification. When the post of Chief Accountant arose on 1.4.1991 both the appellant herein and the first respondent were in the feeder category; but the appellant was not qualified whereas the first respondent was qualified. But however, it was the appellant who was promoted to the post of Chief Accountant. This was the subject matter of the challenge in the said writ petition and in the writ appeal. In appeal, it was found that no approval was obtained from the Registrar in the case of the appellant herein as per Rule 185(8) of the Co-operative Societies Rules and though he was granted relaxation of the qualification at the stage of promotion it was cancelled by the Joint Registrar. But the Government found that want of prior sanction was the only defect in the case which was only a technical one and the appellant herein cannot be punished for that. The specific contention of the first respondent that the guidelines issued on 23.3.1989 which was in force till 1991 when the vacancy of Chief Account arose was not followed in the matter was taken note of and the appellant was found not entitled to the relaxation of qualification as per the guidelines. The Division Bench also noticed that except the promotion to the post of Chief Accountant, the other promotions

given to the appellant herein were not challenged by the first respondent herein. The Bank had also given reasons for the exemption given to the appellant herein. It was opined that when a qualified candidate was available, the promotion given to the appellant herein, after granting relaxation in qualification without prior sanction was irregular and it was held that that in future if there are qualified hands available in the feeder category unless they are debarred for some reasons, exemption shall not be granted to persons not having prescribed qualification.

3. Admittedly, the vacancy for the post now in question having arisen thereafter, no exemption as such would have been granted. But the Bank promoted the appellant to the post of Secretary, as per Ext.P5 dated 2.7.2005, produced in the case. It was noticed that the appellant was having the maximum length of service and he has rendered satisfactory service. The Society also recorded that the appellant's services is required in the larger interest of the Society and hence it was directed to promote him to the post of Secretary with effect from 2.7.2005. In Ext.P5, it is stated that the appellant has already acquired necessary qualification for the post. The first respondent herein challenged the decision of the Committee in promoting the appellant as the Secretary inter alia contending that the appellant does not possess the requisite qualification. Though an original petition was filed before this Court, the first respondent was relegated to the remedy provided

under the Statute and it was thereafter the first respondent approached the Arbitration court for necessary relief. The Arbitration court, by Ext.P8 award, repelled the contention of the appellant that he possessed the minimum academic qualification required as provided under Rule 186(1) of the Kerala Co-operative Societies Rules. According to the Arbitration Court, the minimum qualification as prescribed under Rule 186(1) is that the incumbent should possess a degree in Commerce or Master's Degree in Arts of recognized University with Co-operation as special subject or B.A., B.Sc., B.Com degree of recognized University. But the appellant's contention is that it could be treated as a Post Graduate Degree was repelled. The Arbitration Court set aside the decision of the Committee in promoting the appellant as the Secretary and further declared that the first respondent is eligible for promotion and entitled for other consequential benefits. On further appeal, the Tribunal concurred with the finding of the Arbitration Court. Both these orders were challenged in the writ petition filed by the appellant as W.P.(C) 3718/2007. The learned Single Judge found that the appellant passed M. Com. Degree course conducted by Madurai Kamaraj University through distant education correspondence programme. After referring to Rule 186 of the Rules, the learned Single Judge went on to hold that the appellant had qualified in degree of Master of Commerce having passed final examination in November, 2004 in second class. Ext.P3 is the

Degree Certificate issued to to the appellant, by the Faculty of Commerce which shows that the appellant was admitted to the Degree of Master of Commerce having been certified by duly appointed examiners to be qualified to receive the same and having been placed by them in the second class at the examination held in November, 2004. But Exts. P2 and P3 show that the degree granted to the appellant is not B.A./B.Sc or B. Com and therefore, it can only be considered as a Degree in Commerce or Master's Degree in Arts of recognized University. But the qualification as prescribed under Rule 186 (1) stipulates the minimum qualification as 'a Degree in Commerce or Master's degree in Arts of a recognized University, with Co-operation as special subject. In so long as the appellant has not been shown to have obtained the degree with Co-operation as special subject, the learned Single Judge found that he is not possessed of the requisite qualification. It was held that among the subject included for the Post Graduate degree in Commerce, though Co-operative Banking was a subject of study, the further argument on the side of the appellant that Co-operative Banking must be treated as Co-operation was not accepted by the learned Single Judge. It was held that Co-operation, Banking and Co-operative Banking are three distinct and different subjects and in that view of the matter, the learned Single Judge also held that the appellant was not qualified for the post and dismissed the original petition confirming the view expressed by the

authorities below. It is against the said decision that the present writ appeal is filed.

4. Learned Senior counsel Sri. Damodaran, appearing on behalf of the appellant contended, placing reliance on Rule 185 of the Kerala Co-operative Rules, that in the matter of promotion to the higher category, a candidate need not possess the qualification as prescribed under Rule 186 of the Kerala Co-operative Societies Rules and by virtue of Rule 185(8) as amended by SRO 617/05 dated 19th May, 2005, it shall be competent for the Registrar of a Co-operative Societies to relax the qualification, other than basic qualification and pass in the competitive examination specified in sub rule (5), of an employee for the purpose of promotion in deserving cases subject to the conditions prescribed thereunder as per which the minimum educational qualification for ministerial and supervisory posts other than those requiring technical qualification shall be SSLC and exemption from passing SSLC shall not be granted in any circumstances, provided that in the case of employees who were appointed direct to the ministerial posts before 1.1.1974 SSLC need not be insisted. Where the academic qualification prescribed is graduation and above, exemption from acquiring the said qualification may be considered if the incumbent has passed JDC or equivalent, if he has a minimum service of five years in the feeder category and he should not be less than forty-five years of age. According to him,

when rules permit relaxation of qualification (from possessing graduation and above) and if the minimum qualification required for granting exemption is that the incumbent should possess JDC or equivalent with five years service in the feeder category and should not be less than 45 years of age and the appellant having satisfied the said minimum requirements justifying such exemption, should be deemed as having possessed of the requisite qualification.

5. We are unable to agree with the above contention. First of all, Rule 185(8) of the Rules only contemplates relaxation of qualification by the Registrar of Co-operative Societies from possession graduation or above as prescribed for any post for promotion, provided the candidate possess the minimum qualification of passing JDC or equivalent and the experience required as prescribed under clause (b) of sub-rule (8) of Rule 185. In this case, nobody has sought for any relaxation and further it is for the Board of Directors to pass a resolution indicating the reasons justifying such exemption and the brief history of service details etc. based on which alone the Registrar could consider whether such relaxation is to be granted. The Board has not passed any such resolution and hence no question of relaxation has arisen in the present case and there is no claim made by the competent authority. What is prescribed as minimum qualification is only to enable the Registrar to relax from qualification of

graduation or above. That only means that but for such relaxation, the qualification as prescribed under Rule 186 are mandatory qualifications which should be possessed even in the matter of promotion. Rule 185 merely provides that promotions could be effected based on the seniority in the feeder category. In other words, promotion is only the method of appointment to fill up the post. It does not prescribe a different qualification. hence eligible candidate possessed of requisite qualification could be promoted. So however, regarding the higher qualification of graduation and above could be relaxed in appropriate cases subject to the candidate possessing the minimum qualification as prescribed under sub-rule (8). Since it is nobody's case that any such relaxation was made in favour of the appellant, we are of the considered view that the only question that arises for consideration is as to whether the appellant is possessed of the qualification as prescribed under Rule 186?

6. As per Rule 186 of the Kerala Co-operative Rules, all the posts other than those requiring technical qualifications, the starting pay of which is Rs. 250/- and above, the qualifications prescribed are a degree in Commerce or Masters degree in Arts of a recognised University with Co-operation as special subject or B.A., B.Sc. or B.Com. degree of recognised University and and Higher Diploma in Co-operation or Diploma in Rural Services with Co-operation as optional subject or B.Sc. (Co-operation &

Banking) Degree of the Kerala Agricultural University. As far as the present case is concerned, the only contention advanced is that the appellant is possessed of the qualification as prescribed under Rule 186(1)(A). The learned Single Judge found that the degree in Master of Commerce possessed by the appellant itself is not sufficient unless the study included Co-operation as special subject. It admits of no doubt that Co-operation as a special subject is mandatory in the case of a candidate who possessed of a degree in Commerce or Master's Degree in Arts of a recognized university without which the qualification may not be complete, as prescribed. In this case, an attempt was made to show that in the course of studies for degree in Master of Commerce obtained from the Kamaraj University did include the various subjects including Co-operative Banking but in the absence of any materials placed on record, the expression " "Co-operation" and "Co-operative Banking" cannot be understood to be the same thing. "Co-operative Banking" may be one of the papers included for the studies but what is required to be possessed is that the degree should be with Co-operation as special subject. Necessarily it only means that it should be optional subject in the studies undertaken by the candidates. No attempt is made to show that the degree obtained by the appellant was a degree with Co-operation as special subject.

7. The first respondent herein, in the pleadings in Application No. 28/2005 filed before the Arbitration Court, has specifically pleaded that the appellant is not possessed of a degree as required by rules as he does not possess a degree in Commerce or Master's Degree in Arts with Co-operation as special subject. In the written statement, in para 4 thereof, a copy of which was made available to us by the learned counsel appearing for the respondent, the appellant has stated that he possesses a degree in Commerce from a recognised university, apart from holding Co-operative Qualification of JDC. According to him, he has obtained JDC qualification in 1988 and M.Com. in 2004. There is no averment that the degree in Master of Commerce obtained from the Madurai Kamaraj University was a degree with Co-operation as a special subject. A Division Bench of this Court in **Mukesh v. State of Kerala** (2006(4) KLT 1023) had occasion to consider whether a degree in Social Service/Social Work can be equaled with Sociology. After referring to the various provisions contained in the statute, it was held that Sociology and Social Work are different Departments of studies and the degree in Social Service or Social Work cannot be equated with Sociology. In matters like this, when it is specifically alleged that the candidate does not possess of requisite qualification as the degree obtained by him is not with Co-operation as a special subject, it is for the appellant to establish by producing relevant

documents, if he has a case, that the degree obtained by him is with Co-operation as special subject. What is attempted to be shown, as above noticed is that Co-operative banking is included only as a paper in the studies for the degree obtained by him. That cannot be said to be sufficient qualification as prescribed under the rules. With the available materials on record, therefore, we are unable to hold that the appellant possess the requisite qualification. If so, the view taken by the learned Single Judge that the appellant cannot be held as possessed of the requisite qualification as prescribed under Rule 186(1)A of the Rules is a plausible view which cannot be interfered with in this appeal. The appeal fails and it is accordingly dismissed.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

knc/-